

Municipal Council Meeting Minutes  
March 10, 2005 @ 7:00PM  
Town Hall Auditorium

This meeting was originally scheduled for March 8<sup>th</sup>, it was postponed to March 10<sup>th</sup> due to inclement weather.

Pledge of Allegiance – Councilor Lawrence

Accept minutes February 12, 2005 – Councilor Benson motioned, Councilor Pinierio second.

Roll Call: Mario Pinierio, Robert Woodsom, Roger Benson, James Chandler, Ann Connolly King, Esther Headley, Anne Larnard, Christopher Lawrence and Joseph McMilleon

High School Building update was canceled and rescheduled for April 12, 2005.

### **PUBLIC COMMENT**

Claude Gonthier, 112 Kimball Road – I read comments in the paper last week as a result of the decision of Judge Kottmyer regarding finding in favor of the plaintiffs to have the right to referendum on the library. I was upset that still you people are reluctant to let it go and let's have the vote on it and be done with it. At the last meeting a question was asked by one of your members; are we going to appeal this and the Council President said he did not know the answer to that. That very day I had received notice of filing an appeal, so apparently you are not getting the info in a timely manner.

President McMilleon – That is not true. That was a notice of appeal; that was not a guarantee of an appeal, it was just a notification.

Claude Gonthier – I had the actual filing in my hand before you meeting.

President McMilleon – That was not the information that I had.

Claude Gonthier – I can tell you for a fact it was filed before you made that comment.

President McMilleon – I'm telling you that the information that I was given by the Mayor and by the Counsel was that it was a notice of appeal.

Claude Gonthier – Today I received another notice from the Clerk of Court that says the petition filed by the Mayor of Amesbury....all requests have been denied by the Clerk of Courts. The appeal has been denied. As a citizen, plaintiff and taxpayer I would urge you at this point that if this is in fact so stop the appeals process here. I resent using taxpayer's money to restrict my rights. The judge has found we have the right to a referendum.

President McMilleon – I will close public comment and go back into regular session.

### **LICENSES AND PERMITS**

**2005-21 Common Victualler transfer – T. Maxim Enterprises, 52-54 Main Street**

President McMilleon – reads 2005-21 into the record.

Atty. Peter Lim – Representing T. Maxim Enterprises

Councilor Benson – motion to approve 2005-21 with the stipulation that all outstanding business with the town is taken care of before.

Councilor Pinierio – second

Voted – Unanimous

President McMilleon – Before we move on to the second readings we do have a late file that I would like to bring before the council. I need a motion to accept these.

Councilor Benson – I move to accept 2005-29 and 30 as late files.

Councilor Pinierio – second

President McMilleon – Actually I am going to ask Councilor Benson to make a recommendation on each of these separately. The emergency preamble has to be approved by the council by a 2/3 vote. We have to take them separately.

*Councilor Benson – I move that we accept 2005-29 as a late file.*

*Councilor Pinierio – second*

*Voted – unanimous*

President McMilleon – I would like to take these up on the agenda now. No objections I will entertain a motion.

Councilor Woodsom – I move that we take 2005-29 and 2005-30 out of order.

President McMilleon – Again I am going to ask to vote on 2005-29 as a separate issue.

*Councilor Woodsom – I move that we take 2005-29 out of order.*

*Councilor Pinierio – second*

*Voted – Unanimous*

President McMilleon – reads 2005-29 into the record. Pursuant to G.L. c.54 §42C, an election may be held not earlier than the 35th day following the date the election is called, provided that the Town Clerk receives written notice of the question on the same day.

Due to the present condition of the Library and that even a short delay of the Library project may jeopardize a substantial State grant and significant private funding; I am hereby declaring an emergency out of concern for the public health, safety and welfare. The Library is not handicap accessible and is inadequate for the maintenance and safeguarding of the Library's holdings. While a significant State grant is available, the Town must be able to demonstrate it has secured the remainder of the required funding by May 2005.

*Councilor Benson – I move for approval of 2005-29 as submitted*

*Councilor Pinierio – second*

Councilor Lawrence – I would like to have the Mayor explain this.

Mayor Hildt – The reason for the preamble as you know is so the council can vote on this measure tonight. A measure that reflects a request of Judge Kottmyer to allow a referendum to be held on the question of the vote that the council took on August 10, 2004 in which they approved the 3.6 million dollars share of the Town Library funding. I would like to make a couple of comments on the history of this because I think it is important to understand the town's position in this process which began when we were served with the law suit last September. The town did not choose to be sued but, the town was sued. The town had to act in accordance with the need to protect the town's interests. One of the town's attorney's is here tonight to explain in further detail if need be. I might point out that Mr. Silverstein is here at no cost to the town and that contrary to what has been said by some in the past, he is here to represent the town which very much includes the council, all of whose members were named in this law suit. The hearing was held on Feb. 8<sup>th</sup>, the Judge heard testimony by the plaintiffs and the town and after one hour she informed us that she was not going to be able to reach a conclusion by the end of the day and that she was going on vacation for two weeks and that the plaintiff and the defendants were requested to develop stipulation or fact that they would submit to her for her consideration and that the hearing would resume on Feb 25<sup>th</sup>. At that time during the hearing the judge indicated that it was her belief that the plaintiffs did in fact have a right to a referendum and that unless there were any other over whelming arguments to the contrary that she would likely rule in favor of the plaintiffs. Our attorney's did submit final arguments by the deadline. On that same day the decision was handed down late that afternoon and as you know the ruling required that we hold a referendum or scrap the plan. At this point I want to say that I am not opposed to the concept of a referendum. All the while my intent was not to deny the voters the opportunity to voice their opinions through referendum on this question. I believe, in my interpretation of the charter, that it is the responsibility and the duty of the councilors who were elected by the voters to do this work, to take this vote. There have been people that have said repeatedly give the people a voice, give the people a choice. My interpretation is that the voters, in voting for their councilors have in fact transferred their authority to those councilors to make these kinds of decisions. I further believe that the Judges ruling renders a section of our charter essentially meaningless and opens the way for unlimited referendum on any financial question. I don't believe this is they way our government should be run. I believe that the councilors are the voice of the people and that in such cases that the council and the Mayor agree that a referendum question should be held that is an appropriate occasion to have a referendum. In this case after many many hours of public hearings and most of the people in this room sat through most of that testimony if not all of it. It was held in public and many of the 14 plaintiffs in this case had numerous opportunities and took them to voice their opinions and their concerns and after several delays the vote was finally held and the majority ruled. Normally you would think end of story, we move on however, there are individuals who for reasons that they had explicitly stated that they did not agree with the vote and chose to bring this law suit. This bill offers us the opportunity to have this referendum. I am not opposed to this; I will accede to the judge's wishes. At the same time I think it is very important to continue pursuing an appeal. Although the ruling that was handed down today essentially denied what we requested which was an expediting of a request to have one justice rule on this appeal, that justice was not interested in doing this that means that we go back to the slower system of this appeal. When that appeal will be ruled on, I don't know, I think it is now immaterial. It is not a question about us winning or loosing this case. It is a question of protecting the charter as we see it and of protecting the councils responsibilities and power to vote on matters and issues that they were elected to vote on. I hope that we can put this behind us and all of us will understand this referendum question if the council votes to approve the question and approve the setting of the date this evening that we will have this referendum and

the matter will be settled and we will move on. It is a binding referendum and I assure you that we are committed to accept the will of the people, if the majority rules in favor of not going through with this project however if the majority rules in favor of upholding the councils vote of August 10<sup>th</sup> we will move with speed to move forward with the project that I consider vital to this town in many respects not the least of which is allowing for accessibility by all of our citizens.

President McMilleon – Councilor Lawrence's question as I understood it; you want him to explain to the public what a preamble was? The reason that we have to have a preamble is so that we can vote on this tonight. So there is an emergency preamble that I read earlier and that has to be approved by a 2/3 vote of this council. That allows us, when we have the preamble approved, to be able to take up 2005-30 which is the actual bill to have a referendum on the library. We are under some time limitations in order to have this referendum.

Councilor Lawrence – So by an emergency preamble for the resolution 2005-30 which means we don't have to have two public readings.

President McMilleon – It allows us to vote it tonight. Normally when an item comes before the council for the first time it is always referred to a committee and our next meeting.

Mayor Hildt – If we went the regular route its two months or more to bring this to closure.

Councilor Chandler – I have a problem with this because I don't see it as an emergency. To me this situation should have been handled back in November with the vote and it would have been taken care of months ago. I voted in favor back in November and had we voted this would have all been taken care of. The idea that we don't have handicapped access is a shame. I am a strong supporter of this library probably more so than many of the other people here because I am willing to make some cuts in this budget to pay for it. I think that we should learn from our mistakes. We have heard from town counsel and from other people that the suit in the first place didn't have any legs and could never stand; guess what, it stood. First of all I was very embarrassed that I was never even consulted that an appeal was made with my name on it and the Mayor said that we were very much a part of it. We appealed and guess what, the judge again.....I mean I could have said that we would lose this appeal. I wasn't as familiar with the charter as I should have been. As I read through that charter now I think there is no doubt in the intent that this kind of an item would be subject to referendum. If we want to live by a charter we have to have rules to go by and I think if everybody reads this charter carefully they will see very clearly that this type of an item is subject to referendum. I think we have to understand that the opposition we have is going to require us to dot the I's and cross the T's. To try to run this through in one night, guess what, you are going to be in court again and we are going to lose again. We just keep spending money on a losing battle.

President McMilleon – I would add that it is important for the councilors to know and for the public to know that if we do not pass this preamble that will prevent a vote on the referendum and the referendum will be mute. We have to have this done by a certain time in the community to secure the grant and also to secure the private funding. The original petition by the plaintiffs in this case was that we have a referendum. What is before us tonight allows us to have a referendum and let the community vote on this item. I want to make that very clear. It would be nice if we could take our time on this but we can't.

Councilor Benson – I agree, I think this is an emergency regardless of how we got to where we are; we stand to lose a lot of cash if we don't put this through in a timely manner. If we were to wait and have a vote in 6 months and the town said they wanted a library where does that leave us in terms of financing the project? Then there is a mandate, a public will to do the project and we don't have the state money. It makes all the fiscal sense in the world to consider this an emergency and to pass this and get it on the ballot before the May deadline.

Councilor Lawrence – Do we have it in writing that we will lose the grant?

Mark Lankin – Yes, there is a deadline for May 15<sup>th</sup>.

Councilor Benson – I don't understand this. The people wanted a vote and we are going to give them a vote lets just move ahead.

Councilor Pinierio – It says 35 days, so if you add 35 days from tonight that should bring you around April 15<sup>th</sup>. Why are we having it in May?

Mayor Hildt – The closest Tuesday after the 35 day period is April 19<sup>th</sup> right in the middle of April vacation week. It is conceivable that a lot of people will be away.

*Councilor Benson – I move for approval of 2005-29 as submitted*

*Councilor Pinierio – second*

*Roll Call Vote – 7 Yes, 2 No (Lawrence, Chandler)*

Councilor Chandler – I object to this vote as per section 3-7. One the first occasion that a question on adoption of a measure is put to the Municipal Council if a single member object to the taking of a vote, the vote shall be postponed.

President McMilleon – You can object but you need 3 objections to stop a vote on an emergency measure.

Councilor Chandler – My fear is that we are going to end up in court again.

President McMilleon – Reading page 7 of the charter section 3-7 C. One the first occasion of the question on adoption of a measure is put to the municipal council if a single member objects to the taking of a vote the vote shall be postponed until the next meeting of the municipal council whether regular or special. If one member shall further object such postponement shall be until the next regular meeting. But, for an emergency measure at least 3 members must object. This procedure shall not be used more than once for any measure notwithstanding any amendment to the original measure. This is an emergency measure you need 3 objections in order to prevent this from going forward. I would ask the same question to you councilor that Councilor Benson just asked. We have a group of citizens that have petitioned this body to have a referendum. They went to court to have a referendum. We now have a referendum before us and we are still objecting and still trying to prevent this from going to the public. I don't understand it.

Councilor Chandler – That is not at all why I am objecting. I think this should have gone to vote back in November and this would be way by the wayside. It is a case now of actual legalities of this thing and believe me we will be back in court again and I don't see how we can say this is an emergency. I don't see how any Judge would see this as an emergency. The library has been like this for years.

Councilor Benson – Do we have 3 objections?

President McMilleon – No we don't.

**2005-30 A Resolution to schedule a special election – Mayor Hildt sponsor**

President McMilleon – We are now on 2005-30.

**A Resolution**

To vote to schedule a special election.

Be it Resolved by the Municipal Council of the Town of Amesbury assembled, and by the authority of the same as follows:

That the Municipal Council vote to schedule a special election for Tuesday, May 3, 2005 and to place the following question on the ballot:

Shall the following measure which was approved by the Municipal Council take effect?

Measure 2004-35 appropriated \$3,600,000.00 for constructing an addition to and for remodeling, reconstructing and making extraordinary repairs to the Amesbury Library and authorize the borrowing of such funds.

Councilor Benson – I don't have a copy of the original petition, was there a ballot question wording on that petition?

President McMilleon – No there was not I checked on that.

*Councilor Benson – I move for approval of 2005-30 as submitted.*

*Councilor Larnard – second.*

Councilor Lawrence – All though I want to move forward with the referendum...this is the question, the final question? I think all the councilors here received a letter in the mail from the plaintiff that they recommended that the question be "Shall the town vote to rescind the affirmative vote of the municipal council" is there... Councilor Benson mentioned that that might have been in the original petition he wasn't sure. Where is this question coming from? Should we look at this question as well as yours?

Mayor Hildt – Yes, I do have a copy of Mr. Iacobucci's question. Amesbury has a somewhat of a notorious history of ambiguous referendum questions. If anybody can remember what they voted on over Woodsom Farm some years ago might bring this into sharper focus. Our attempt is to make this question easy for everybody to understand, it is unambiguous. Shall the measure be approved and there is the measure, that is the measure that the council

voted on August 10<sup>th</sup> end of story. Mr. Iacobucci's is difficult to understand. Shall the town vote to rescind the affirmative vote. If I were an English teacher I would send this back.

Jonathan Silverstien – Unlike most charters, the Amesbury charter doesn't have specific language for a referendum question like this but, it does have language suggested for a ballot question under the initiative petition and the suggested language is "Shall the following measure which was proposed by an initiative petition take affect". There are also state laws that suggest certain types of referendum questions in certain instances. Those state laws also suggest affirmative questions. I think it is common sense that an affirmative question is what is called for. Judge Kottmyer decision calls for a referendum approving the measure so the question should certainly be what ever the wording, usually there is specific charter language as to what the wording should be but, what ever the wording is, and it should be affirmative, not in the negative. I think that is clear in section 8 – 3 in the charter which indicates that the measure at issue will become null and void unless a majority vote in favor there of. If you vote in favor of the question presented by Mr. Iacobucci you would be rescinding the vote.

Councilor Chandler – Are you suggesting that we are not going to rescind the council vote.

President McMilleon – I want to respond to that because I am looking at the last page, the conclusion and order for judgment which is from Judge Kottmyer. It says basically that unless the council shall first rescind that vote...we can either rescind that vote or measure 2004-35 must be submitted to the registered voters of the Town of Amesbury as provided in section 8-3 of the Amesbury charter.

Councilor Benson – I feel very strongly about this in terms of the wording. I took Mr. Iacobucci letter to my mothers house and showed it to her and I said now you support the library how would you vote on that and she said yes. It is pretty clear to me that we have to make yes mean yes and no mean no. This backward stuff really bothers me and I don't think we should be doing it unless we are forced to.

Councilor Larnard – I want to support what Councilor Benson said. When I read the wording that was proposed by Mr. Iacobucci it was....people are not going to understand it. It is not as clear as it could be. I think what the Mayor has proposed is much clearer and that is what we want to bring to this issue, clarity. It is very important that we word it in a clear manner. I support the wording from the Mayor.

Councilor King – I believe if we send out a question that is ambiguous we are doing a huge disservice to the citizens of this town. This has become a very contentious issue and we need to put it out there in a way to resolve it in a way that everybody understands. To send a question out that is going to leave people wondering, not sure what they are answering is a huge disservice. The council would not be doing their job and doing the best they can for every citizen in this town if they send out a question that is going to leave people wondering what they just answered.

Councilor Benson – It will forever cloud the vote. People will look back and say yes it passed or failed but nobody knew what they were voting for.

Councilor Pinierio – You had said the 19<sup>th</sup> is a vacation week so why not make it the 26<sup>th</sup> of April.

Mayor Hildt – I think May 3<sup>rd</sup> is fine, we can be in touch with bond counsel on May 4<sup>th</sup>.

Councilor Chandler – I think I am getting a better handle on the plaintiffs. I can see we are going to end back in court again and this isn't going to happen.

Mayor Hildt – We respectfully disagree with each other but, I can tell you this. If we are back in court it won't be because I choose to go back to court.

Councilor Larnard – I don't understand that line of reasoning. I am going to vote the way that I see the right way to vote is after I research. Not because I think that if I don't do something I am going to get sued. I need to vote to represent the district the best that I can vote based on multiple sources of information. I'm going to vote what I see is the best interest of the town.

Councilor Pinierio – When we took that vote in May I voted against the library and I have said from the beginning, bring it to the voters and now here it is. Bring it to the voters. If we win or lose let the voters speak and let's carry on.

Councilor Chandler – Mario, I 100% agree with that. My problem is we don't know who we are fighting against. If we had interrupted the charter the way town counsel did and they told us we wouldn't have a suit; well guess what we did have a suit. We wouldn't have a problem with an appeal; we did have a problem with the appeal. I think we are going to have a problem with this.

Councilor Headley – I think we are wasting time and going over the same foolish things. I would like to have a vote now.

President McMilleon – We have a motion to approve

*Councilor Benson – I move for approval of 2005-30 as submitted.*

*Councilor Larnard – second.*

Roll Call Vote – 8 Yes – 1 Abstain (Chandler)

10 Minute Recess

## **SECOND READINGS**

**2004-83 An Act authorizing the Town of Amesbury to establish a Tourism Promotion Fund – Councilor Lawrence sponsor cont.**

President McMilleon – reads 2004-83 into the record.



Councilor Lawrence – We have approval for this from the Finance Committee as well as the Ordinance Committee for adoption. There have been a couple of questions as to the cost of the Tourism Promotion Fund. I would like to clear that up once again. The Tourism Promotion Fund is creating a fund that promotes tourism in Amesbury. Any non profit, 501 C3 organization can apply for funds/grant from this tourism fund to promote Amesbury; programs, flyers and advertising. What I am proposing is to take the hotel taxes that we currently receive from the state for reimbursement to the general fund of approximately \$65 to \$70 thousand per year, which is 4 cents on the tax rate, be put into this fund which will promote Amesbury. The fund is across the country, hundreds of cities. It is a fact that every dollar spent on tourism is a 4 dollar return on investment. There is one section of the bill that requires the Office of Community and Economic Development to be involved and that is Joe Fahey. I have said on numerous occasions the involvement of Joe Fahey's office is to just answer phones which is in his realm of duties currently. If someone calls up and asks for an application for the tourism fund he says you can pick it up here or call who ever who has the applications. It is the same as what is done with the fence permits. It will be the committee that is established to administer these funds from there. *I would like to move the recommendation of the Ordinance Committee.*

President McMilleon – Councilor you are saying you want to divert 65-75 thousand dollars that now comes from the state into that fund rather than where it goes to now into the general fund?

Councilor Lawrence – Yes

President McMilleon – So that would be resources for the community that we would not have and that would get reflected in the tax rate, about 4 cents. That money now goes into that special account. Who would determine the disbursement of those funds? How would that be used and approved? Who would have authority over that?

Councilor Lawrence – There would be a three member committee; one Mayoral appointee, one Councilor appointee and a Governor appointee. The account would be held in the treasurer's office.

President McMilleon – Do we have these kinds of funds set up now?

Mike Basque – The closest thing would be the Cultural Council, they get a grant and they have the committee that votes how to give that out.

President McMilleon – Would expenditures come before the council?

Mike Basque - With the Cultural Council they get the grant and you approve it and then the committee meets and they disburse it. I think with this one you would have a committee that would vote to disburse the funds.

President McMilleon – So there is not any point at which this council.....I know the money comes in from the State but there is no time where this council would say we are earmarking 65 thousand dollars for the tourism fund.

Mike Basque – The way this is worded it says the funds from the motel/hotel would be deposited into there fund.

Councilor King – I have many concerns with this. First, I feel that this belongs in the Finance Committee. It never should have moved out of Finance Committee. The only time this was discussed was July 28, 2004 and at the end of that meeting it was recommend that it be continued so we could have Mike Basque and Joe Fahey to further discuss the project; that never happened. I have many financial questions. We are pulling 80 thousand dollars out of revenues that are for the town and at a time where we need to be beefing up our revenues to use for town issues. I don't believe we should be pulling it out to use it for tourism. When I was at the Ordinance Committee there were numerous questions of the over head of this project. I would like to see a finished product come before us before we vote on this; at least a draft of what the grant would look like. That grant application would have to be cleared by council to make sure it is okay. There would have to be some sort of advertising that goes along with this and that would come out of the 80 thousand. How much exactly is the overhead on a yearly basis? I tend to think it is going to be a lot more for Joe's office than to just pick up a phone and re-route somebody. I would like to hear what Joe has to say about this. Taking 80 thousand out of a revenue fund is an issue we should take very seriously. I feel it should go back to Finance.

Councilor Lawrence – We do have a letter from Joe Fahey's office 12/2004, he stated he really likes the city of Bothell Tourism Fund. I did provided Joe with maybe 10 different tourism promotion programs and he said he like this one but I really didn't have time to follow up. Well that is back in December and we are now in March so the actual cost of the project again its Joe Fahey's office their man to answer the phone for questions from the residents. Once this fund is approved I think there will be plenty of talk and people will know about it that it happens every year. Right now we currently have Amesbury Days which is funded by the Town and it will now come under this tourism promotion fund, which is about 9 or 10 thousand dollars. We would have the Woodsom Farm come out of this.

Councilor Woodsom – I think Ann made some fine points. For me it is simple, it is 75 thousand dollars out of a budget that we have been asking Department Heads to level fund for the last 3 years and we laid off teachers for the last two years. If this was a new tax that was starting this year and it was 80,000 that weren't in the budget I would say yes, we could consider this but, we are taking 80,000 out of our budget and I don't think we can afford it right now.

Councilor Lawrence – It is 65 – 75 and it is not guaranteed every year, it fluctuates.

Councilor Woodsom – If it was \$2 dollars I don't think we could afford it right now. We are laying off teachers.

President McMilleon – Are you saying Councilor that the money would come out of this years budget.

Councilor Lawrence – This is dated to take affect July 05.

Councilor Larnard – There are parts that make a lot of sense but, I think it should go back to Finance Committee. I don't feel that we have discussed this. The last Finance Committee meeting there were four of us that were not there and I haven't even gotten the minutes yet to see what was discussed at that meeting. There were only five members at that meeting. I had brought this up before; at what point are we going to start talking about this. I really wanted to see what was going on with this bill because it has been hanging around for a while. Councilor Lawrence assured us that we would be getting more information. In the minutes of February 23<sup>rd</sup> it was brought up and Councilor Lawrence said "I would like to continue this for another month. Joe Fahey and I have spoken several times on this; he has identified one program that seems to work really well. We are waiting for additional information on that and on Tuesday at our next Council meeting I will make sure everybody on the Council will have an updated packet with information on other programs through out the country that work". I have not gotten that packet and I would request that we get the packet and send this back to finance.

Councilor Benson – I support the proposal, I think this is a good idea. If there are several members of the Council uncomfortable voting this tonight then I don't see why we can't take it back to committee because it would be a shame not to have it pass because people aren't comfortable with the vote.

President McMilleon – Is there a real need to expedite this now.

Councilor Lawrence – We have talked about things being on the books since October, the Truck Stop and this has been on the books since July, there is no reason why we can't move it forward. Everyone seems to be able to do research on their own on other subjects and this is probably something that is pretty wide spread through out the country. We can continue to next Council, I don't see why it has to go back to Finance.

Councilor Larnard – I agree there is stuff kicking around but, every time it came up you asked for it to be continued. None of us asked for it to be continued, you asked for it to be continued. That is why I brought it up. What I am referring back to is us doing our own research that's fine but you actually said that you were going to provide us with an updated packet with the information on the other programs. That is something you volunteered to do and we have not gotten that packet yet. If you are not able to do it I will certainly research it on my own, I just need clarification on who is going to do that. I still think it needs to go back to Finance to discuss the financial implications of taking 65 thousand out of the budget.

Councilor Lawrence – We know the financial implications, 4 cents on the dollar.

Councilor Larnard – I mean programs and policies.

President McMilleon – What ever decision we make we should also make a point to ask Joe Fahey to be at our next Finance Meeting or next Council meeting. A motion was made by Councilor Lawrence to move the recommendation by Finance and Ordinance do I hear a second. Hearing no second Councilor what would you like to do?

*Councilor Lawrence – I would like to continue it to the next Council meeting and refer it to Finance Committee and ask that Joe Fahey attend.*

*Councilor Chandler - second*

Councilor King – I would prefer that he come to the Finance Committee. There was talk that there may be a salary increase required by his staff. This is where I see a problem not getting information from Ordinance. Councilor, all we have is the recommendation from Ordinance. We don't know what that recommendation is; what was the discussion?

Voted – Unanimous

Councilor Larnard – Should I be doing my own research or are you going to get us an updated packet?

Councilor Lawrence – Oh we'll get it for you Councilor.

## **PUBLIC HEARING**

### **2005-8 To Request the Municipal Council to amend the Zoning Bylaw Table of Dimension and Density Regulations – Mayor Hildt sponsor cont.**

President McMilleon – reads 2005-8 into the record and declares the public hearing open.

Paul Gagliardi – I am here to represent Ron Francoeur who owns a piece of property in the RC district which would be affected by the proposed amendment to footnote 7 which we oppose. We oppose it on a number of reasons. Number one, we believe it affects his property and his property only and we have maps showing the parcels in the RC district. In our opinion it only affects that property so we think it smacks of spot zoning. Secondly, we think it is not good planning. The proposed amendment would require the maximum of 30% of the lots in the proposed cluster be on existing streets. For this parcel it would require a new road to be placed into the field which we think better planning would preserve those fields and have the houses on the perimeter which would be on Woodman Road and South Hampton Road. Finally, we don't think it makes good fiscal sense for the Town of Amesbury to be advocating the construction of new roads which will mean new roads for the town to maintain in the future. I believe the recommendation of the Planning Board was also not to recommend adoption.

Nipun Jain – Passed out a letter explaining the background and how he got to the proposed amendment (attached).

Councilor Lawrence – The Ordinance Committee voted not make amendments to footnote 7 and voted for adoption of footnote 9.

Councilor Woodsom – Can I have clarification on the ordinance committee vote on number 9, why they came to an affirmative vote?

Councilor Lawrence – Well Nipun Jain was there and we discussed it and he gave reasons for doing so and mentioned now as Paul Gagliardi did as well about .....

Nipun Jain – The concerns on footnote 7 we had about how it would affect the parcels and what is the benefit versus the improvements that would be sought with the proposed amendment. In debate and discussion footnote 7 wasn't agreed upon as an appropriate amendment whereas footnote 9 was agreed upon both by Ordinance and Planning Board as a valuable amendment and it is recommended that the Municipal Council adopt footnote 9 only.

President McMilleon – We just got this memo tonight and it is good information and it goes along with what Councilor Headley was bringing up before about having ordinance changes being put into layman's terms so we can understand them. The problem that I have is that I am just getting them tonight and I am trying to read through it while I am trying to listen and make a decision.

Councilor Lawrence – Nipun, you can continue this as well but we are talking about when we referred to Woodman Road....proposed buildings for the future development would be along the road way so that the scenic vistas would be preserved. The Ordinance and Planning said ....

Nipun Jain – The vistas would not necessarily be preserved because when you have development going into open space that is what you would see and not the vistas you would see when the land is vacant. It would depend on how the road is laid out, how the houses are constructed, the architectural styles and what is actually going to be visible from the public way. We agreed, yes that is one of the potential challenges when and if the amendment did take place. I can explain in layman's terms footnote 9.

Matt Tessier – Cammett Engineering – Displayed maps on the proposed development on Woodman Way and how footnote 7 would affect it.

Councilor Woodsom – Spot zoning, we are talking about a zoning change and looking at the sub division that the zoning change was created for, this seems like it is unquestionably spot zoning.

Paul Gagliardi – We have a map here, the zoning map that shows you all of the land within the RC district and for the life of us we can't find another parcel that this would affect. One of the largest parcels in the RC district is the golf course which has little or no street frontage so it would all be new roads if it was brought in there. Another large parcel is great swamp, which it doesn't really affect from a practical stand point. There are some other lots on South Hampton Road that might be affected but the topography and the frontage just screams out that this won't affect it. This is the only lot we can find where there is enough frontage where you could put all of the lots on the existing frontage. Nipun indicates there might be 2 others, I would love to see which ones they are that this one would have an affect on. Again, the impact of this is, rather than having the lots on existing roads and preserving the fields on this particular parcel; where going to be forced to put a road into it, destroy the field, destroy the scenic vista looking up into the farm house up on the hill. One of the things the planning

board wanted when Ron Francoeur went with his preliminary plan; they wanted to keep that vista open and we agreed to move the lots away from the corner so people driving north on South Hampton would still see that view. This proposed zoning change would totally go against that initial request from the planning board.

Councilor Benson – I think we are pretty clear that footnote 7 is bad. The question from here is do we continue this or do we dive into footnote 9.

Councilor Woodsom – I would like clarification from Nipun on the other properties that this would affect.

Nipun Jain – Responds, unable to hear on tape.

Councilor Benson – I think we should stick to the zoning change. We are not voting on this particular development.

Councilor King – Do the zoning change have anything to do with the concerns of the abutters?

Nipun Jain – I would like to talk about the zoning changes.

*Councilor Benson – I move that we continue this to our next regular council meeting.*

*Councilor Pinierio - second*

Voted – Unanimous

**2005-19 An Order to request the Municipal Council to authorize the Town of Amesbury to overspend the Snow and Ice Budget for Fy2005 – Mayor Hildt sponsor cont.**

President McMilleon – reads 2005-19 into the record and opens the public hearing.

Councilor Benson – I will move the recommendation of the Finance Committee which was to approve.

Councilor Lawrence – second

Roll Call Voted – Unanimous

**2005-20 An Order to vote to appropriate \$60,000 from Free Cash to demolish and remove the structures at Trader Alan's Truck Stop – Mayor Hildt sponsor**

President McMilleon – reads 2005-20 into the record and opens the public hearing.

David Frick – I can't understand why we don't take care of this. I think Fafard is going to pay for it at some point, there going to pay for it, let's get rid of it. I don't know why it costs \$60,000. You can practically blow the walls down and stick them in the back of a dump truck. We need to take care of the problem.

Mike Greaney – We should clean up the building at Trader Alans. A while ago we applied for an EPA grant and because the building was still standing we couldn't get the grant. I want to make sure after the building is taken down we apply for an EPA grant. There is a lot of masonry products in those building. I hope they don't take all those products and bury them. I would like to know the terms of the contract for the demolition.

Mayor Hildt – Last fall I spoke with the company that the town designated in the case that the council approved the funds; AJ Kookan, the same company that removed the cow barn but did not take the slab. Jeff Kookan went to the site to inspect. The town was approached by a dinner museum in Rhode Island and they were trying to obtain the dinner that is attached to the main buildings of the truck stop for five years. We introduced a bill to the council and they voted to surplus that property. The museum never came to remove the dinner. About 10 days ago we got a call from them and they were going to come up and take the building and they did. The building that burned, the roof is gone, the walls are standing but the building is in a precarious condition. Denis Nadeau has informed me that the corners of the building are bowing and that he is not inclined to permit any access to that property and that includes dumping for snow. Jeff Kookan did say he would do his best to reduce his price. He did ask why we didn't let it burn; the fact is that it is against the law to do that. There were some drums in the building that contain some substances that were not identified and that was something that the demolition company was going to take care of. I expect that we will get a good deal from him.

Denis Nadeau – I spoke with Mr. Kookan, he is going to take all the buildings down to ground level. Anything below ground level is going to be the responsibility of the DPW. If you look on the left side of the hotel there are several piles of dirt. In the spring any foundation hole that is left will be back filled by the DPW.

Marc Deschenes – To spend the money from free cash to do this is an extremely good example of poor planning. With regard to whether or not Farfard is going to pay for this; I don't think that is true. The money in the escrow can not be used to pay for clean up.

John DiGennaro, 9 Ellison St. – Has this gone out to bid? I read it was 48-60 thousand.

Michelle Thone – There has never been a question on whether this needs to be done. The question has been where the money is coming from. As far as coming from free cash; a large portion of that money should be going into the stabilization fund and we are not doing that. Mr. Pinierio brought up the \$111 thousand from the school lunch deficit that is not included in this free cash number where is that? Mr. Benson, you said you were going to sit down with Mr. Basque and the Mayor and go over the budget with a fine tooth comb and I am very curious to hear where we can get the money for this without taking it from free cash.

Councilor King – I agree that this money shouldn't be coming from free cash. In December we had the opportunity to use state supplemental funds that came through and the majority of the council voted not to use that money. In December had we used the supplemental when it first came through we would have had the cash without going into the budget or free

cash. The relief the residents saw by putting that toward their tax bill is \$9. If you look at the liability issues, hopefully we won't have them I think the \$9 would have been well spent. I agree it shouldn't come from free cash.

Councilor Lawrence – It was voted unanimously by the Finance Committee that Councilor Benson would meet with Mike Basque; I would like to know if that happened and what he found out. I would like to hear from the Mayor regarding bill 1997-70 as requested by the Finance Committee.

Councilor Benson – I spoke with Mayor Hildt before the meeting and there were a couple things that should have been done. I should have met with Mr. Basque and the Mayor to find money in the budget and the Mayor was going to bring to us tonight a document in terms of putting some of this into stabilization fund. Neither one of those things happened. I think this thing has kind of become a political football. In light of what happened I think we should approve this tonight. I did receive a verbal agreement with the Mayor at least to go further into discussing putting free cash into the stabilization fund.

Mayor Hildt – I regret I have not had the time to do this. I have no designs on that money and I do agree that it should go into the stabilization fund. I am concerned about the growing snow budget deficit. If we have any more storms...we are now at \$150,000 and it could go considerably higher. That kind of money becomes next to impossible to take out of the budget.

Councilor Chandler – I think this building has to come down and should come down right away. I would like an assurance from the Mayor....I think we have an agreed upon price that the truck stop is going to be sold at to Farfard and I think that price should be increased by what ever the amount is to take down these buildings. This is \$60,000 worth of clean up that he won't have to do so therefore he should pay more money up front.

Councilor Pinierio – What about all those vehicles and those tanks below the ground? Are we going to come back next year in an emergency and say we need \$100,000 to clean up the site because Farfard is going to be buying up the property? What is going to happen with all those vehicles? Are we going to leave them there until we have another emergency like we have now?

Mayor Hildt – The vehicles belong to the man who owns the junk yard. The Building Inspector goes out and has words with him and he complies. We are encouraging that individual to relocate. As far as the tanks; we have applied for grant money and we did not get the money because the buildings are still standing. The next grant round that comes up, we will be on it.

Councilor Lawrence – I would still like to ask Roger to meet with Mike to go over what the transfers were. He was pretty adamant about doing that and it wasn't done so I would like him to follow through on that for future reference.

*Councilor Benson – I will do that Councilor. I move for approval of 2005-20 as submitted.*



*Councilor Larnard – second*

*Roll Call Vote – Unanimous*

**2005-12 To Amend Municipal Council Rules 5B and 11A – Councilor Connolly King & Larnard sponsor**

President McMilleon – reads 2005-12 into the record and opens the public hearing.

Councilor Woodsom – In Rules and Procedures we didn't get anywhere with the bill because we didn't understand our focus and there is still no focus on the committee. It is not up to the committee to decide what their focus is; it is up to the Council to tell the committee what their focus is. What do you want the committee to focus on? Are we going to focus on the merits and come back with a three member recommendation yes or no or do you want to know if it conflict with the charter or general laws and we will come back with an essay? I want a little guidance.

Councilor King – Actually I scouted around and I can't find another community that has a Rules and Regulations Committee. I wonder if it is the time to discuss do we need a committee like this. Why not just bring it to the full Council.

President McMilleon – It probably would have been appropriate to have this question when we accepted the Rules and Procedures for the council at the beginning of the year. To try to answer your question; that committee was set up to do exactly what it says. To review any proposals and rules changes for the council. No different than what the Finance Committee was set up; to look at all the appropriations requests that come through or the ordinance committee that looks at all the ordinances and bylaw changes that come through. They take those and look at them, they go to the planning board and they get recommendations from the planning board on ordinance. We get recommendations from Mike Basque and we have people in and we hold hearings on financial issues and then we get a recommendation from those committees and we make a decision here at the council. It is the same thing with this. I would think what would happen would be that you would take this proposal and the other one before us about amending article 7 of the Amesbury Town Bylaws that is going to have to be looked at. You hold a meeting and you have a discussion about; does it conflict with any of the charter, what are the plus and minuses in terms of changing the rules as you are proposing them and bring it back to the council. The council will have a discussion and make a decision. I don't know if it is anymore complicated than that.

Councilor King – I disagree. If you look at our proposal and this goes to the Ordinance Committee because it is a similar thing. If it is something that we are going to be doing as a group as a whole, why divert ...it is different from finance...so if you just take the Rules and Regs and Ordinance its all information that is going to be redone all over again in length the same length that it was done in Rules and Regs and you are not there to look at the merit of anything. I don't think three councilors should come up with a recommendation on an issue before the whole council. That is something for the whole Council to come up with. Bob and I sat to go over Chris's and it was just a task that, it just had no meaning. We sat and read through it and we started going line by line and instead of looking for something in the content and discussing it as a whole...nobody knew what they were doing. We went back

and looked at the Rules and Regulation and we said this is what it says. I don't feel it is a functional committee. I think the whole time Bob has been on the council it has met once. It needs to be reviewed if it is a functional committee.

President McMilleon – The reason they have not had meetings is because they have had no items referred to that committee.

Councilor King – Why don't you come and show us; we sat and we couldn't do it. If you feel you know how to do it you need to come and help us out with it.

Councilor Lawrence – I agree with Joe, Rules and Regs is just reviewing documents and how they pertain to council rules and procedures it is as simple as that and it may not have worked while you were chairman of the committee but we do have a new committee now so we will see how it works. We never did go through line by line on the 2004-126 it was referred to workshops and so forth so..

President McMilleon – Look, it was referred, the reason that 126 was referred was because that was an extensive document it was about 15 pages. Brian who was involved in writing that provided us with a step by step review of that with how it related to the bylaws, charter and council rules. This functioning of this rules committee is no different than the ordinance and the ordinance committee looks at things far more complicated than what the rules committee is looking at. If they can come back and do their work as a committee and come back and make a recommendation to this council I don't for the life of me see why that can't happen with rules and procedures. That is the way it is done in almost any city or town that you go to where they have a city form of government and they have sub committees made up of 3 or 4 members of the council. If we have to in a council meeting go through rule by rule just like we do with some of the ordinance things tonight, if we have to have people here we will and we will go through it. The preliminary work should be done by the committee. That is my understanding.

Councilor Woodsom – I would like to nail down a date with Chris and Roger right now so we can schedule a meeting. *Rules and Procedures March 24, Thursday at 7:00PM. Location to be announced. I move that we continue this to our next Council meeting*

*Councilor Benson – second*

*Voted – Unanimous*

**2005-126 Amendment of Article 7 of the Amesbury Town Bylaws – Councilors Lawrence and Woodsom (cont. set workshop date)**

President McMilleon – reads 2005-126 into the record.

Councilor Woodsom – I move we continue this to our next council meeting and will be taken up at the same rules and procedures meeting on March 24 at 7:00.

Councilor Lawrence – We have this continued to the April 7<sup>th</sup> Ordinance Committee. If you want to have the workshop after the 4/7 Ordinance is ok. I would also like to make a

request; in the Ordinance Committee we have three residents and three councilors. Two of the residents are attorneys and they are currently looking over 126 in detail. I would like to request through the chair that we ask Kopelman & Paige to be at the April 7<sup>th</sup> Ordinance Committee meeting for some questions and answers on their opinion.

David Frick – Is the workshop something the public could be working on with you?

Councilor Lawrence – sure and you can also go to the April 7<sup>th</sup> Ordinance meeting as well.

David Frick – Just in a general sense this is a proposal that has very interesting bed fellows. I think there are a lot of people that are interested in this and think it is a great idea. I looked through it and I don't have my notes with me so I am kind of glad you are not doing it tonight but, there are a lot of really positive things and I have come in and spoken with you and your predecessor about the fact that I don't think it's really good for you to be both the Finance Committee and the Council. I think it would be good for you to get input from other people. I was on the Finance Committee before the change of the charter and I have talked to other people that were on the same committee and they feel very strongly in the same way that it makes sense and it would be a help and an asset to you to have different people on it. Whether the exact makeup you have put out there is the best, I don't know. I think some of it is laid out too specific and you are not giving the Finance Committee in certain areas.

Councilor Woodsom – I move to continue the public hearing to our May council meeting and we will be holding a rules and procedures meeting on April 28<sup>th</sup>.

Councilor Chandler – second

Voted – Unanimous

*Councilor Lawrence – I would like to invite Kopleman & Paige to our April 7th Ordinance meeting to comment on a letter that they sent analyzing this bill.*

*Councilor Pinierio – second*

*Voted - Unanimous*

## **NEW BUSINESS**

**2005-22 An Order to request the Municipal Council to accept a grant in the amount of \$4,532.15 – Mayor Hildt sponsor**

President McMilleon – reads 2005-22 into the record

Councilor Benson – I move we refer 2005-22 to the Finance Committee and hold a public hearing at the April 12<sup>th</sup> council meeting.

Councilor Chandler – second

Voted – Unanimous

**2005-23 An Order to request the Municipal Council to accept a grant in the amount of \$31,000 – Mayor Hildt sponsor**

President McMilleon – reads 2005-23 into the record

Councilor Benson – I move we refer 2005-23 to the Finance Committee and hold a public hearing at our April 12<sup>th</sup> meeting.

Councilor Pinierio – second

Voted – Unanimous

**2005-24 An Ordinance to Ensure Access to Public Documents – Councilor Lawrence sponsor**

President McMilleon – reads 2005-24 into the record

Councilor Lawrence – I move that we refer 2005-24 to the April 7<sup>th</sup> Ordinance Committee and to continue to the April 12<sup>th</sup> council meeting for a public hearing.

Councilor Pinierio – second

Voted – Unanimous

**2005-26 A Resolution to authorize the Municipal Council to enter into an Inquiry and Investigation into the status of the Town of Amesbury Cemetery Funds and Maintenance – President McMilleon sponsor**

President McMilleon – reads 2005-26 into the record. This is a resolution I will take a motion that we pass this.

Councilor Benson – motion to approve

Councilor Pinierio – second

Councilor Larnard – Part of Jane Snow's letter that we go talked about was to start a cemetery commission. I really think we should have that proposal looked at again.

Voted – Unanimous

**2005-27 A Resolution to authorize the Municipal Council to enter into an Inquiry and Investigation into the purchase of an SUV for the Amesbury Police Chief – President McMilleon sponsor**

President McMilleon – reads 2005-27 into the record. I would like to make a comment. I would like to strike the word "Investigation", this is basically just an inquiry. I would like to have this continued to the next council meeting. I am working with the Mayor and Mike Basque on this and I would like to wait and hold off. If I don't get all the information that I am looking for, which I think I will, then we can go forward with this.

Councilor Pinierio – I move we continue 2005-27 to our next council meeting and strike the word investigation.

Councilor Chandler – second.

Voted – Unanimous

**Late File**

Councilor Woodsom – motion to accept 2005-28 as a late file.

Councilor Larnard – second

Voted – Unanimous

**2005-28 An Ordinance to approve Amesbury Waterway Management fees – Councilor James Chandler**

President McMilleon – reads 2005-28 into the record.

Councilor Chandler – I move we refer this to the Finance Committee and Ordinance Committee and a public hearing at the council meeting on April 12th.

Councilor Woodsom – second.

Councilor Chandler – passes out amendments to his bill

**COUNCIL COMMUNICATIONS, ANNOUNCEMENTS AND COMMITTEE REPORTS**

Councilor King – reads letter regarding standing committees (attached).

Councilor Lawrence – The ordinance committee will put together a mission/goal statement and submit it to all the councilors.

Councilor Lawrence – Wants update on South Hampton water fees.

Councilor Woodsom – Motion to adjourn

Councilor Larnard – second

Voted – Unanimous

10:10PM

Respectfully Submitted,  
Assistant Town Clerk